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IN THE

Supreme Court of the United States

TERI KENDRICK, ET AL.,

Petitioners,

v.

AMERICAN AMUSEMENT MACHINE ASSOCIATION, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF *AMICUS CURIAE* OF THE NATIONAL INSTITUTE ON MEDIA AND THE FAMILY IN SUPPORT OF PETITIONERS

DONALD B. AYER
(Counsel of Record)
JAMES E. ANKLAM
CYNTHIA L. BAUERLY
JONES, DAY, REAVIS & POGUE
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3939

Counsel for Amicus Curiae

21pp

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STATEMENT OF INTEREST[1]

The National Institute on Media and the Family is a non-profit, non-partisan and non-sectarian organization which serves as a national resource for research, education and information about the impact of media on children and families. The National Institute does not advocate censorship, but rather provides parents, policy-makers, teachers and other concerned adults with information, based on research, about the effects on children of exposure to various forms of media. Among other activities, it publishes a yearly report card for parents which details the content of video games and makes recommendations about the appropriateness of specific games for children of various ages. The National Institute supports tools, such as the Ordinance, that enforce parents' decisions about which video games are appropriate for their children to play.

Dr. David A. Walsh is the Founder and President of the National Institute on Media and the Family, and is principally responsible for directing its efforts. Dr. Walsh has a Ph.D. in psychology from the University of Minnesota, is a licensed psychologist in the State of Minnesota and is currently on the faculties of the University of Minnesota and the University of St. Thomas in St. Paul, Minnesota. He has testified before Congress about the harmful impact on children of violent video games and other media, serves as the American Medical Association's spokesperson on media violence, and participates in various government-sponsored panels and committees dealing with the effects of media violence on children. He is also the author of four books on the subject.

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[1] Counsel for all parties have consented to the filing of this *amicus* brief, and *amicus* have filed those consents with the Clerk of the Court. Sup. Ct. R. 37.3. No counsel for a party in this case authored this brief in whole or in part, and no person or entity, other than *amicus* or their counsel, made a monetary contribution to this brief's preparation or submission. Sup. Ct. R. 37.6.

Dr. Walsh and Dr. Douglas Gentile, the National Institute's Director of Research, have conducted research analyzing the impact of exposure to violent video games on aggressive and violent behavior in children. In addition to directing its own research, the National Institute collaborates with other scientists studying this important issue.

REASONS FOR GRANTING THE WRIT

The Seventh Circuit appears to have ruled that a child has a First Amendment right to play ultra-violent video games and that any such right is virtually absolute. That court apparently has adopted a test that bars ordinances like the present one absent proof that the video games at issue "caused anyone to commit a violent act." Pet. App. 11a. Existing research demonstrates substantial correlations between exposure to ultra-violent video games and various anti-social attitudes and behaviors; yet, it is unlikely that proof of historical causation of specific violent acts can ever be shown. That is because, as the district court noted, "[s]ocial phenomena such as violent behavior by children are explained by a multitude of factors." Pet. App. 53a.

The court of appeals adopted its test based on its own extraordinarily libertarian philosophy of child-rearing. "Now that eighteen-year-olds have the right to vote, it is obvious that they must be allowed the freedom to form their political views on the basis of uncensored speech *before* they turn eighteen, so that their minds are not a blank when they first exercise the franchise." Pet. App. 8a (emphasis in original). The court failed to explain how access to violent video games is useful to the development of a child's political views or voting habits. It simply opined that "[p]eople are unlikely to become well-

functioning, independent minded adults and responsible citizens if they are raised in an intellectual bubble." *Id.*[2]

The Seventh Circuit errs fundamentally in positing an all but absolute First Amendment right of children to have access to "uncensored speech," including ultra-violent video games that portray human dismemberment. This Court should grant certiorari now to prevent the chilling of reasonable governmental efforts, like the one at issue here, to secure for parents a realistic opportunity to screen the media influences to which their children are exposed.

The authority and duty of parents to supervise the activities of their children is beyond reasonable question, as are the benefits that result from parental guidance in helping to steer their children toward beneficial and constructive pursuits and away from pernicious and perverted ones. Indeed, this Court's cases make clear that the legal authority of parents to control the activities of their children is of constitutional dimensions. *See, e.g., Troxel v. Granville*, 530 U.S. 57 (2000).

Well-accepted practice and law in many areas establishes that states and localities likewise have an entirely proper role in limiting the influences and activities to which children are exposed and supporting parental judgments. In addition to limiting the access of minors to items such as tobacco,[3] guns,[4]

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[2] Indeed, the court below apparently sees the role of government in restricting the ability of minors to receive information on the same terms as adults as posing some sort of totalitarian threat. "The murderous fanaticism displayed by young German soldiers in World War II, alumni of the Hitler Jugend, illustrates the danger of allowing government to control the access of children to information and opinion." Pet. App. 8a.

[3] *See, e.g.*, 720 Ill. Comp. Stat. § 675/1; Ind. Code § 35-46-1-10.5.

[4] *See, e.g.*, Conn. Gen. Stat. 29-34; Del. Code Ann. tit. 24 § 904.

and alcohol,[5] state and local authorities routinely restrict or foreclose entirely minors' freedom of action to receive certain information and engage in certain activities available to adults. States prohibit minors from buying pornography.[6] Localities impose curfews on minors.[7] Most states prohibit minors from driving[8] and marrying without their parents' consent.[9] Perhaps most akin to this case, states prohibit minors from gambling.[10] Although gambling is an accepted form of entertainment for adults — just as an ultra-violent video game might be — minors are nonetheless prohibited from all forms of gambling, including purchasing lottery tickets.[11] Despite the fact that these regulations impose significant burdens on minors, a state may constitutionally regulate such activities based on far less proof of a risk of harm than that required by the court of appeals. Indeed, it is difficult to imagine that any of these regulations would survive the Seventh Circuit's standard requiring proof of actual, historical harm.

To the extent that this Court has ever recognized any constitutional question as being raised by state limitations on the access of children to information, it has applied a far

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[5] *See, e.g.*, Fla. Stat. ch. 34 § 562.111; N.M. Stat. Ann. § 60-7B-1; *see also South Dakota v. Dole*, 483 U.S. 203 (1987) (upholding federal law conditioning highway funds on state's adoption of 21 as minimum drinking age).

[6] *See, e.g.*, Mass. Gen. Laws ch. 272 § 28; *see also Ginsberg v. New York*, 390 U.S. 629 (1968) (upholding New York statute).

[7] *See, e.g.*, *Hutchins v. District of Columbia*, 188 F.3d 531 (D.C. Cir. 1999) (en banc).

[8] *See, e.g.*, Va. Code Ann. § 46.2-334.

[9] *See, e.g.*, 23 Pa. Cons. Stat. Ann. § 1304(b); N.M. Stat. Ann. § 40-1-5.

[10] *See, e.g.*, N.J. Stat. Ann. § 9:17B-1 (under 18 prohibited from gambling); Nev. Rev. Stat. § 463.350 (under 21 prohibited from gambling).

[11] *See, e.g.*, Minn. Stat.§ 349A.12.

different standard from that invoked by the court of appeals. In *Ginsberg v. New York*, 390 U.S. 629 (1968), in the context of limiting the access of children to non-obscene pornography, this Court considered only whether it was "rational for the legislature to find that the minors' exposure to [such] material *might be harmful*." *Id.* at 639 (emphasis added). Applying a standard like that one, the City's conclusion that parental supervision is appropriate based on the risk of harm posed by exposure to ultra-violent video games is easily upheld. Scientific evidence presents ample reason for parents to determine that ultra-violent video games are inappropriate for their children, and for the City to adopt an ordinance supportive of parental decisions. While the extensive existing evidence falls short of proving that violent video games have "caused" specific violent acts, it establishes a high degree of correlation between exposure to such games and various forms of uncooperative, hostile, and anti-social behavior, including acts of violence.

This Court's review is necessary in order to establish that such evidence is more than sufficient to support the Ordinance and others like it.

I. THE DECISION BELOW INTERFERES WITH THE ESSENTIAL ROLE OF PARENTS IN OVERSEEING THE ACTIVITIES OF THEIR CHILDREN BY BARRING LIMITED STATE REGULATION SUPPORTING SUCH SUPERVISION

Parental supervision over the activities and experiences of their children is widely recognized as critical to proper upbringing. The realities of modern society — including the ubiquitousness of television, movies, and other media influences and the decline in the proportion of homes where there is a full-time, stay-at-home parent — have made that task of supervision more challenging than ever before. Despite these challenges, many parents strive to supervise their

children and to limit their exposure to media that may be harmful. The Seventh Circuit's decision — by declaring video arcades to be a sort of constitutional public forum for games, however violent, to be shared by children, however young — is a serious obstacle to the ability of parents to perform their critical role of supervising the media habits of their children.

In exercising that supervision, parents must make decisions based on common sense and their best judgment about which activities to allow their children to engage in. Few parents wait for historical proof that a particular activity has caused harm before restricting their child's access to that activity. Based on a variety of considerations, many parents have determined that ultra-violent video games are inappropriate for their children. Those decisions are amply supported by a substantial and growing body of scientific research. *See, infra*, Part II.

Recent federal legislation encourages parental supervision of the media habits of their children. Based on a congressional finding of "a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children," the Federal Communication Commission has required the V-Chip to be placed in all televisions manufactured after January 1, 2000. *See* 47 C.F.R. § 15.120.[12] The V-Chip permits parents to program their

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[12] The FCC regulations fulfilled the mandate of section 551 of the Telecommunications Act of 1996, which authorized the Commission to require manufacturers of television receivers to place V-Chips in television sets, based on the following findings:

> Studies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior.
>
> * * *

televisions to block material that is violent or that a parent determines is otherwise inappropriate. The V-Chip operates by using the television industry's voluntary rating system and permitting parents to restrict access to shows with particular ratings. In this way, the V-Chip enforces parents' decisions about what material is appropriate for their children even when they are not with their children.

Just as the V-Chip upholds parental decisions about appropriate television shows, the Ordinance enforces parental decisions about video games in places where parents are less able to do so themselves. Parental authority is more easily exercised in the home, or in the homes of friends and neighbors where a parent can identify games available to children. Parents have limited opportunity to exercise such control in arcades and other commercial establishments. *See id.* at 86a ("parents are less able in public places than in the home to control the level of violence and sexual content to which their minor children are exposed").

The Ordinance conditions minors' access to graphically violent video games on parental consent, thus bolstering parents' decisions about which games are appropriate for their children in commercial establishments. *See* Pet. App. 85a (goal of Ordinance is to "protect[] parents' authority to shield their minor children from influences that the parents find inappropriate or offensive"). Certainly the interests of parents

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> Parents express grave concern over violent and sexual video programming and strongly support technology that would give them greater control to block video programming in the home that they consider harmful to their children.
>
> * * *
>
> There is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children.

See 47 U.S.C. § 303, Historical and Statutory Notes.

advanced by the Ordinance here outweigh any legitimate interest of the Respondents in having their violent video games viewed by children without their parents' consent.

The Ordinance respects the rights of parents who decide they either want their children to play graphically violent games or have no objection to them. *Cf. Ginsberg*, 390 U.S. at 639 ("the prohibition against sales to minors does not bar parents who so desire from purchasing the magazines for their children"). Children whose parents do not find the games inappropriate may play the violent video games in their own homes, in friends' homes, or in arcades. Parents merely need to accompany their children as they play the games in the arcade or, if a parent wishes to leave the arcade, give the arcade personnel express permission for such play. Pet. App. 86a. In this way, the Ordinance does not interfere with parental authority.

This Court has consistently rejected the narrow view of parental authority announced by the Seventh Circuit. Parental authority over "the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. at 65; *see also Pierce v. Society of the Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923). The "primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). Because parents are better equipped to make decisions about what is appropriate than their children, the law permits parents to "make decisions for their minor children that deprive the children of liberty." *Parham v. J.R.*, 442 U.S. 584, 624 (1979) (Stewart, J. concurring). "The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience and capacity for judgment required for making life's difficult decisions." *Id.* at 602. Parents' decisions about which media their children are exposed to are

well-within the realm of "care, custody and control" recognized and protected by this Court's cases. A child's development of political views so that the child can properly exercise the franchise upon reaching majority does not trump parental authority in determining to which material a child may be exposed.

This Court has approved an effort similar to the City's Ordinance in the past. In *Ginsberg*, this Court stated that a government "could properly conclude that parents and others, teachers for example, who have [the] primary responsibility for children's well-being are entitled to the support of the laws designed to aid discharge of that responsibility." 390 U.S. at 639. This Court should grant certiorari and confirm that modest governmental efforts to support parental supervision of the video game-playing activities of their children, like the one at issue here, are constitutionally permissible.

II. EXISTING RESEARCH DEMONSTRATES THE NECESSITY FOR PARENTAL SUPERVISION IN THIS AREA, BY SHOWING A STRONG CORRELATION BETWEEN EXPOSURE TO ULTRA-VIOLENT VIDEO GAMES AND VARIOUS FORMS OF ANTI-SOCIAL AND VIOLENT BEHAVIOR

The American Medical Association, in conjunction with other members of the public health community,[13] has concluded that the negative impact of violent video games "may be significantly more severe than that wrought by television, movies, or music." American Medical Association *et al.*, *Joint Statement on the Impact of Entertainment Violence*

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[13] The *Joint Statement* was issued by: the American Medical Association, the American Academy of Pediatrics, the American Academy of Family Physicians, the American Psychological Association and the American Academy of Child and Adolescent Psychiatry.

on Children, Cong. Pub. Health Summit, at 2 (July 26, 2000).[14] The interactive nature of video games increases the effect of violence on a player when compared to the effect of violence in television and movies on a viewer.[15] Video games require a player to identify with a lead character who, in most ultra-violent video games, is usually the aggressor. Identification with the aggressor increases the likelihood that a player will model the violent behavior depicted in the game. The repetitive nature of video games also increases the likelihood that a player will learn from the games.[16] Finally, violent video games reward violence in a manner not found in movies or television.[17] The unique combination of these attributes means that "violent video games provide a complete learning environment for aggression, with simultaneous exposure to

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[14] The *Joint Statement* also addressed violence in all forms of media: "The conclusion of the public health community, based on over 30 years of research, is that viewing entertainment violence can lead to increases in aggressive attitudes, values and behavior, particularly in children." *Joint Statement*, *supra*, at 1.

[15] The court of appeals found this point unpersuasive. It contended that the best literature is "interactive" because "it draws the reader into the story." Pet. App. 9a. This characterization ignores the participatory aspect of violent video games. Although good books and other media can draw a person into a story, they cannot make the reader or viewer control or participate in the development of a story in the same way that video game play does.

[16] Most games require players to do the same act over and over (*e.g.*, shoot and kill) increasing the likelihood that children will learn from them. In contrast, children rarely see the same movie or television show as often as they play the same video games.

[17] A player can only reach the next level in most violent games — the reward — by "killing" or otherwise injuring others. The reward structure of the games increases the chances that a child will learn behaviors from the game. Douglas A. Gentile & David A. Walsh, *The Impact of Video Games on Children and Youth*, The Informed Educator Series (Educational Research Service ed., forthcoming Oct. 2001) (manuscript at 14, on file with the authors).

modeling, reinforcement, and rehearsal of behaviors." *See* Craig A. Anderson & Karen E. Dill, *Video Games and Aggressive Thoughts, Feelings and Behavior in the Laboratory and Life*, 78 J. Personality & Soc. Psych. 772, 788 (2000).

The effects of interactivity, repetition and reward are enhanced by the rapid advance of graphic technology in the past few years. Technology now permits screen images to be rendered at vastly higher resolution than ever before, making today's games increasingly realistic and life-like. Far from the rough, squared-off images found in video games of a decade ago, today's game images resemble the three-dimensional, computer-generated graphics found in feature movies. This means that the graphic images of violent acts featured in ultra-violent video games are also increasingly realistic and life-like.[18] Because video games featuring violence are a pervasive feature of American childhood,[19] the realistic nature of the violence depicted in those games is grounds for parental and societal concern.

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[18] The district court observed that, in one of the games submitted to the court for review, when the characters in the game are shot, they die in "dramatic fashion. In some cases, the chest cavity explodes in a shower of blood, ribs, and gore, while in other cases the target is decapitated. The court observed at least one character whose entire upper torso appeared to have been severed from the lower half of the figure." Pet. App. 30a-31a.

[19] The average American child between the ages of two and seventeen plays video games for seven hours a week. Gentile & Walsh, *supra*, at 2. In a recent study of eighth and ninth graders, respondents reported an average of nine hours a week playing video games. Paul J. Lynch, *et al.*, *The Effects of Violent Video Game Habits on Adolescent Aggressive Attitudes and Behaviors*, Paper Presented at the Biennial Conference of the Society for Research in Child Development, at 5 (Apr. 2001). Only six percent reported never playing video games. *Id.* An industry poll of the most popular Nintendo games found that 40 of the 47 had violence as their main theme. *Id.* at 2.

Research focused specifically on video games demonstrates that exposure to ultra-violent video games can lead to increases in aggressive thoughts and behavior — including violent behavior — and decreases in prosocial behavior. *See e.g.*, Karen E. Dill & Jody C. Dill, *Video Game Violence: A Review of the Empirical Literature*, 3 Aggression & Violent Behavior 407 (1998) (collecting and reviewing research).[20] Each of these effects poses a risk of harm sufficient to support the City's Ordinance.

More specifically, playing ultra-violent video games can change the way a child views the world around him or her by increasing the child's hostile attribution bias. Hostile attribution bias is the measure of a child's tendency to interpret ambiguous social cues as being of hostile intent. This is perhaps the most fundamental explanation for increases in aggressive behavior resulting from exposure to ultra-violent video games. "The specific mechanism is as follows: exposure to video game violence results in a hostile attribution bias which creates a predisposition to attribute malignant intent from others' behavior which, in turn, increases the likelihood that children will respond to real-life ambiguous provocation situations with aggression." Steven J. Kirsh, *Seeing the World through Mortal Kombat-Colored Glasses: Violent Video Games and the Development of a Short-Term Hostile Attribution Bias*, 5 Childhood 177, 183 (May 1998); *see also* Gentile & Walsh, *supra*, at 14.

Other behavior — both positive and negative — can be affected by playing violent video games. Studies demonstrate that after playing violent video games, players' tendencies toward prosocial behaviors such as helping and donating to

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[20] *See also* Craig E. Emes, *Is Mr. Pac Man Eating Our Children? A Review of the Effect of Video Games on Children*, 42 Can. J. Psychiatry 409 (1997); Jeanne B. Funk & Debra Buchman, *Video Game Controversies*, 24 Pediatric Annals 91 (1995).

others are decreased. *See* Gentile & Walsh, *supra*, at 16-17; Craig A. Anderson & Brad J. Bushman, *Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature*, 12 Psych. Science 353, 358 (Sept. 2001).[21] Conversely, violent video game play is "a superior predictor" of delinquent behavior such as damaging property or using alcohol and drugs. Anderson & Dill, *supra*, at 782.

Inasmuch as exposure to violent video games can lead to increases in hostile attribution bias and anti-social behavior and decreases in prosocial behavior, it is not surprising that such exposure can lead to increases in aggressive and violent behavior in children. *See, e.g.*, Anderson & Bushman, *supra*, at 357 ("high video game violence was definitely associated with heightened aggression"). Recent research found that those who play violent video games are more likely to act violently in post-play interaction with others than those who played nonviolent games. *See, e.g.*, A. Roland Irwin & Alan M. Gross, *Cognitive Tempo, Violent Video Games, and Aggressive Behavior in Young Boys*, J. of Family Violence 337 (1995); Anderson & Dill, *supra*, at 787; Lynch, *et al.*, *supra*, at 8.

- In the Irwin and Gross study, 60 second grade boys played either a violent or nonviolent game for 20 minutes. The experimenter then escorted the subject to a play room where another child, a confederate in the

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[21] *See also* Jeanne B. Funk *et al.*, *Preference for Violent Electronic Games, Self-Concept, and Gender Differences in Young Children*, 70 Am. J. Orthopsychiatry 233 (2000); Oene Wiegman & Emil G.M. van Schie, *Video Game Playing and its Relations with Aggressive and Prosocial Behaviour*, 37 Brit. J. Soc. Psych. 367 (1998); John H. Chambers & Frank R. Ascione, *The Effects of Prosocial and Aggressive Videogames on Children's Donating and Helping*, 148 J. Genetic Psych. 499 (1986).

experiment,[22] was waiting. The experimenter invited the subject and confederate to play a game. The experimenter told the children that he had to leave the room and to wait until he returned to begin the game. As soon as the experimenter left, the confederate took unfair action to "win" the game. Irwin & Gross, *supra,* at 343-44. Subjects who played the violen video game often displayed violent behavior in reaction to the confederate's conduct, including hitting, shoving, pinching, pulling at clothes, kicking, pulling hair and throwing objects. None of the subjects who had played the nonviolent video game exhibited such behavior. *Id.* at 340, 348.

- In the Anderson and Dill experiment, researchers randomly assigned the 227 participants to play either a violent or nonviolent video game. After playing the games, participants played a competitive game during which they had to push a button faster than their competitor. The winner of the game could select the volume and duration of a noise blast that he or she believed was being delivered to the loser. Those who played violent video games engaged in more aggressive use of noise blasts on a more frequent basis than those who played nonviolent games. *See* Anderson & Dill, *supra,* at 783-86 In addition, Anderson and Dill evaluated the long-term effects of playing violent video games over several years and found that it was positively correlated with aggressive delinquent behavior such as hitting or attacking others with the idea of seriously hurting or killing that person. It was also positively correlated with nonaggressive

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[22] The confederate was an eight year old child who had been trained to assist with the study. The same confederate was used throughout the study.

delinquent behavior such as damaging or destroying property. *Id.* at 782.

- The Lynch study of over 600 eighth and ninth graders found that students who expose themselves to more video game violence are more likely to be in physical fights. Lynch *et al.*, *supra,* at 8. Those students also get into arguments with teachers more frequently. *Id.* These results remained true after the natural hostility levels of individual children were controlled for with multiple regression analysis. Children with low hostility levels who have the highest exposure to violent video games are more likely to have been involved in fights than highly hostile students who have the lowest exposure to violent video games. *Id.*

These studies, and others, demonstrate a high correlation between playing violent video games and increases in aggressive and violent behavior. Although video game violence cannot be isolated as the sole cause of aggression, it is likely to be one of the several causes leading to it. *Id.*

Accordingly, ample scientific evidence demonstrates that exposure to today's graphically violent video games contributes to aggressive, violent and delinquent behavior and decreases prosocial behavior in children. Notwithstanding the Seventh Circuit's view, these conclusions are sufficient to give parents, communities and governments cause for concern about the harmful impact these games may have on children, and solid grounds on which to act.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

DONALD B. AYER
(Counsel of Record)
JAMES E. ANKLAM
CYNTHIA L. BAUERLY
JONES, DAY, REAVIS & POGUE
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3939

Counsel for Amicus Curiae

September 24, 2001